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“Hurley on Justice and Responsibility”

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In *Justice, Luck, and Knowledge*, Susan Hurley defends a reason-responsive account of responsibility, argues that appeals to responsibility cannot provide a justification or non-trivial specification of brute luck egalitarian theories of justice, and sketches her own cognitive-bias-neutralizing theory of justice. Throughout, Hurley is concerned with normative (as opposed to causal) responsibility, where this is understood as that which licenses (moral or prudential) praise, blame, and other reactive attitudes and which implies at least partial (substantive) moral accountability in principle for choices and their results. I shall focus on her arguments about the role of responsibility in brute luck egalitarian theories of justice.

1. Responsibility and Brute Luck

Old-fashioned egalitarianism required that outcome advantage be equalized, but this left no room for agents being accountable for their choices. A leading form of modern egalitarianism—brute luck egalitarianism—avoids this problem by holding instead that only brute luck advantage needs to be equalized. One of the important insights of Hurley’s book is that we need to be much clearer on the connections between normative responsibility (e.g., as requiring ability to do otherwise or as reason-responsiveness) and accountability/responsibility in the theory of justice. In particular, we need to distinguish between *thick* brute luck for an agent—understood roughly as a substantive account of what luck is for an agent—and *thin* brute luck for an agent—understood simply as the extent to which the agent is not normatively responsible for the

outcome. Hurley argues that there is no independent body of evidence (or intuition) about what luck (of a sort relevant to brute luck egalitarianism) really is (independently of issues of responsibility), and that the debate about the correct account of brute luck should be explicitly focused on normative responsibility (the complement of thin brute luck). Brute luck egalitarians—myself included—have tended to assume implicitly that the correct account of normative responsibility is one based on something like the ability to influence deliberately, and have tended to define brute luck in these terms. Hurley very rightly insists that this is a mistake. Brute luck egalitarianism should be formulated in terms of thin brute luck, and then debates in the theory of normative responsibility will settle what the correct account is of thin brute luck.

It's worth noting, however, that brute luck egalitarianism requires a much richer theory of the grounds of normative responsibility than has been systematically developed. Standard theories of normative responsibility (e.g., involving the ability to do otherwise or reason-responsiveness) tell us whether an agent is responsible for her choices, but they do not (I believe) give us a full account of when agents are responsible for the outcomes of their choices. For example, consider two agents, each of who chooses to smoke in a reason-responsive manner in full knowledge that he/she has the ability do otherwise. Each is responsible for his/her choice. Suppose further that, unbeknownst to each of them, one agent has genes that make her immune to lung cancer and the other has genes that make him highly susceptible to lung cancer if he smokes. No plausible brute luck egalitarian view of justice will make each *fully* responsible for the results of his/her (responsible) choices. Any plausible egalitarian theory will view the cancer as partly (but not fully) a matter of comparative bad brute luck and provide some compensation for its effects.¹

The point here is that a full theory of normative responsibility for one's *choices* need not be a full theory of normative responsibility for the *outcomes* of one's choices, and the latter is

needed for brute luck egalitarianism. As far as I know, few, if any, of the standard theories of responsibility provide a full theory of responsibility for outcomes. This is not a criticism of Hurley's work. It is merely the identification of an important project.

In what follows, then, we'll assume that brute luck is understood in the thin sense and that a full account of responsibility for outcomes has been given.

2. The Specification and Justification of Egalitarianism

Hurley's main claim in the middle part of the book is that appeals to responsibility provide neither the basis for the specification of an egalitarian distributional pattern nor the basis for a justification of such a pattern. Although her claim is correct, and her analysis enlightening, it does nothing to undermine the egalitarian enterprise.

Hurley's point of departure for this topic is G.A. Cohen's claim that "a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution" of advantage.² Hurley argues that this aim cannot *justify* the egalitarian pattern, since it's just a statement thereof. This is correct, but no one, I think, ever thought otherwise. Cohen, for example, is simply attempting to give a *formulation* of egalitarianism that makes room for personal accountability.

Hurley acknowledges that appeals to responsibility may have a role in specifying the *currency* of justice (what to distribute). More specifically, they can play a goods-filtering role in this specification. Thus, for example, if wellbeing is taken to be a good that presumptively matters for justice, appeals to responsibility may establish that it is only wellbeing from brute luck (non-responsible) sources that ultimately matters. Hurley rightly insists that this leaves open what pattern justice requires with respect to such filtered goods (e.g., equality, in proportion to desert, etc.).

Hurley further argues that the aim to “extinguish the influence of brute luck on distribution” of advantage does not *specify* in any interesting sense the egalitarian pattern. She argues that there is a luck neutralizer’s dilemma: On the one hand, if brute luck is understood counterfactually (e.g., compared to how one might have fared), then the quoted aim does not specify the egalitarian pattern. This is because there is no reason to suppose that individuals would be responsible for equal amounts of the relevant goods if each person’s (intrapersonal) brute luck were neutralized. On the other hand, if brute luck is understood comparatively (how one fares compare to others), then neutralization of brute luck trivially specifies an egalitarian pattern.

I fully agree that the counterfactual reading is unpromising, and that the comparative reading trivially specifies the egalitarian pattern. This, however, is as it should be. Brute luck egalitarianism cannot be derived solely from claims about responsibility. As Hurley correctly notes, responsibility is simply a filter on the presumptive goods (e.g., wellbeing) for the specification of the currency of justice. The specification of the egalitarian pattern requires an additional assumption (which is what Hurley calls “equality default view”). Hurley agrees with this, but views it as problematic. This is because she interprets G.A. Cohen’s claim that “a large part of the fundamental egalitarian aim is to extinguish the influence of brute luck on distribution” of advantage as a claim that one can obtain a non-trivial derivation of egalitarianism from the notion of neutralizing (counterfactual) brute luck. I doubt very much that Cohen—or any other brute luck egalitarian—ever intended such a claim. The core egalitarian aim is to extinguish (or neutralize) the *differential impact* of brute luck on advantage. As Hurley recognizes, neutralizing the differential impact of brute luck just is the equalization of the impact thereof. This does not provide a justification of brute luck egalitarianism, but it does provide an important and clear statement thereof. That, I believe, is all that brute luck egalitarians ever

intended.

3. Responsibility and Incentives

The final topic that I shall address concerns the compatibility of the neutralization of differential brute luck with incentive rewards. G.A. Cohen has argued against the claim that giving incentives to the talented to work harder can be justified on the ground that it is necessary to improve the situation of the worst off members of society.³ After all, the more talented could choose to work hard without the incentive benefit. Hurley raises the following objection to Cohen's argument. If people are entitled to their option luck (outcomes that are suitably attributed to their choices), then they are entitled to at least *some* of the benefits they produce by working harder. Thus, it seems that brute luck egalitarians are committed to giving some extra benefits to the more talented to who work harder.

If individuals are entitled to their option luck benefits, and individuals reasonably expect differential benefits for additional labor, then it does indeed follow that they are entitled to those differentials. This, however, is compatible with Cohen's argument against incentives for the talented. First, in many circumstances, maximal feasible brute luck equality can be achieved by imposing *lump sum* transfers (taxes and subsidies) and then leaving in place the results of people's choices (e.g., no income taxes). Cohen's argument is against the view that the more talented should be allowed to have a greater share of the *relevant equalisandum* on incentive grounds. In the context of Rawls' theory—which is Cohen's initial target—this includes income (as one of the social primary goods), but Rawls' theory has no commitment to the principle that individuals are fully entitled to their option luck. In the context of Cohen's own egalitarian theory, there is a commitment to the entitlement to option luck advantage, but (labor) income is not a necessary constituent of the equalisandum (brute luck advantage). Brute luck egalitarian

lump sum taxation respects the entitlement to option luck but does not leave the more talented with a greater share of brute luck advantage.

This does not, however, affect Hurley's more general point that there is a tension between a standard conception of the entitlement to option luck and the role that beliefs about rewards can play. Hurley carefully discusses the incentive role that beliefs about responsibility (even if false) can play, but I shall here discuss a related issue that Hurley does not explicitly discuss. The standard conception of option luck advantage is roughly that of net advantage that one would reap in the absence of any social transfers, adjusted by (1) lump sum transfers to equalize brute luck advantage, and (2) choice-based transfers to internalize negative externalities (and perhaps also positive externalities). This is best called *natural* option luck, since it takes that natural payoff for choices (in the absence of any transfers) as given, and adjusts only as required by the above two considerations. Given, for example, the administrative costs of tracking externalities, under some circumstances, it may be more efficient to adopt a policy that does not ensure that individuals bear the full natural costs of their choices. For example, instead of taxing individuals for the exact negative impact on others of their second-hand smoke, we may simply tax the purchase of cigarettes, even though some purchasers impose more second-hand smoke than others. Thus, there can be a tension between the entitlement to *natural* option luck and efficiency. Given that the gains of efficiency can typically be used to help the worst off, there can thus be a tension between the natural option luck entitlement and the providing the greatest benefits possible to the worst off.

Cohen—like most brute luck egalitarians—appears to be committed to the entitlement to natural option luck, but this principle should, I believe, be rejected. Indeed, Hurley's insistence that brute luck is best understood as the absence of normative responsibility helps us see this. Any plausible theory of responsibility for outcomes will make it relative to the agent's

reasonable expectations about outcomes. Agents are not normatively responsible for outcomes they could not reasonably have anticipated. (The lack of reasonable expectations ensures, for example, that the outcome is not reflective of their judgement-sensitive attitudes.) Natural option luck as defined above is not suitably sensitive to reasonable expectations, and thus not the complement of thin brute luck. For example, in a society in which individuals fully expect their income to be taxed at 70%, it would be a matter of thin brute luck (because totally unexpected) if the tax were not collected and instead individuals were given their “natural” option luck benefits. More generally, as long as the policy of 70% income taxation is suitably public and proactive (so that all agents reasonably expect it to be implemented), there is no conflict between it and the entitlement to thin option luck. Agents reap the differential rewards of their choices that they reasonably expect to reap.

Thus, I agree with Hurley that there is a tension between the commitment to entitlement to “natural” option luck and efficiency considerations. The tension disappears, however, if the entitlement is only to thin option luck (which will be expectation-relative). Brute luck egalitarians should therefore give up the appeal to “natural” option luck.⁴

4. Conclusion

Hurley insightfully analyzes the role of responsibility in brute luck egalitarian theories of justice. First, she rightly insists that brute luck should be understood in the thin sense of absence of normative responsibility. The correct account of responsibility will thus tell us what brute luck is—rather than there being an independent (thick) account. I have suggested, however, that the extant standard theories of responsibility are not currently up to this task. They tell us when an agent is responsible for her choices, but they do not determine the extent to which she is responsible for the foreseeable effects of those choices (since those effects depend in part on

factors for which she is not responsible). Second, Hurley also rightly argues that the neutralization of brute luck provides neither a justification nor a specification of an egalitarian theory of justice. I have suggested, however, that the neutralization of *differential* brute luck advantage does, in conjunction with the relevant specification of advantage, provide a specification, and that this is all such a claim could be hoped to do. Finally, I have agreed with Hurley that there is a tension between the entitlement to “natural” option luck and efficiency in promoting the benefits for the worst off. This conflict, however, disappears once option luck is understood in the thin sense of normative responsibility. Thin option luck is sensitive to reasonable expectations and thus leaves room for shaping those expectations to include incentive rewards for labor.⁵

¹ Of course, as Hurley rightly stresses, given that the interaction of choice and circumstance is not neatly separable, there will be some significant indeterminacy here in the separation of effects into responsible and non-responsible components. For more on this problem, and possible ways of dealing with it, see Marc Fleurbaey, “On Fair Compensation,” *Theory and Decision* 36 (1994): 277-307; Marc Fleurbaey, “Equal Opportunity Egalitarianism or Equal Social Outcome,” *Economics and Philosophy* 11 (1995): 25-55; John Roemer, *Equality of Opportunity* (Cambridge, MA: Harvard University Press, 1998); and Bertil Tungodden, “Responsibility and Reward,” *Social Choice and Welfare* (forthcoming).

² P. 931 of G.A. Cohen, “On the Currency of Egalitarian Justice,” *Ethics* 99 (1989): 906-44.

³ Cohen, G.A., “Incentives, Inequality, and Community,” in *The Tanner Lectures on Human Values*, Volume 13, edited by Gerthe B. Peterson (Salt Lake City: University of Utah Press, 1992).

⁴ I develop these thoughts further in Peter Vallentyne, “Brute Luck, Option Luck, and Equality of

Initial Opportunities,” *Ethics* 112 (2002): 529-557; and Peter Vallentyne, “Brute Luck Equality and Desert”, in *Desert and Justice*, edited by Serena Olsaretti (Oxford University Press, 2003): 169-185.

⁵ For unusually helpful comments or discussion, I thank Jerry Cohen, Susan Hurley, Kasper Lippert-Rasmussen, Martin O’Neill, and Andrew Williams.